IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.80 OF 2007
WITH
CIVIL APPLICATION NO.115 OF 2007

Kishor Kirtilal Mehta & Ors. ..Appellants.

V/s.

Mrs. Rekhaben H. Sheth & Ors. ..Respondents.

Mr.J.J.Bhatt, Sr.Counsel alongwith R. Joshi i/b. Neelam J.Asrani for apellants.

Mr.Pravin Samdani, Sr.Counsel with Sanjay Jain i/b M/s.Nankani & Asso. for respondent Nos. 1 to 7.

Mr.Swapnil Bangur i/b T.N.Tripathi & Co. for Respondent No.8.

Mr.S.G.Aney, Sr.Counsel with Birendra Saraf i/b Haresh Mehta & Co. for respondent No.9.

Mr.D.D.Madan, Sr.Counsel with C.S.Kapadia i/b. M.G.Gawde for respondent No.10.

CORAM: A.M.KHANWILKAR,J
DATE : FEBRUARY 9, 2007.

P.C. :

1. This appeal from order takes exception to the Judgment and order passed by the City Civil Court, Bombay dated 18th January, 2007 in Notice of Motion No.281 of 2007. Following reliefs were claimed in the said Notice of Motion.

> "1) That pending the hearing and final disposal of the Suit, Defendant Nos. 1 to 7, 9 and 10, their servants

agents or any person(s) claiming through them be restrained by an order of temporary injunction from in any manner acting upon the said notice dated 16th January, 2007 of the said trust;

2) That pending and hearing the final disposal that the Defendant Nos. 1 to 7, 9 and 10, their servants, agents and/or persons claiming by through or under them be restrained by a Temporary order or injunction from appointing any further Trustee/-Trustees and changing the constitution of the Board of Trustees;

3) For ad-interim and interim reliefs in terms of prayer (1) and (2) above;

4) For costs; and

5) For such further and other reliefs as the nature and circumstances of the case may require."

2. The respondents have filed affidavit in reply and placed on record that pursuant to the notice dated 16th January, 2007, which is impugned in the suit, meeting was convened on 18th January, 2007 and resolutions have been passed in the said meeting; and acting on the said resolutions, intimation was given to the Assistant Charity Commissioner in the form of Change Report. This position is not challenged by the appellants. If so, in my opinion, reliefs claimed in the Notice of Motion have been worked out. On this count alone, the appeal, which arises from the order passed on the said Notice of Motion deserves to be disposed of.

3. Counsel for the appellants however, submits that the appellants would be entitled to seek lesser relief in the form of restraining the respondents from giving effect to the decision taken in the meeting dated 18th January, 2007. I am afraid, it is not possible to entertain this submission in the fact situation. The appellants, if so advised, may take recourse to such other remedy, as may be permissible in law, which will be decided on its own merits.

4. Counsel for the appellants would then contend that even if the claim of the appellants of receiving notice regarding the date of meeting is to be rejected, even in that case, having regard to the nature of controversy, it would be appropriate to direct the respondents to atleast send intimation about every meetings and such direction will not prejudice the respondents in any manner. It is not possible to accept this request in absence of any legal provision to assert such right.

5. In my opinion, however, the entire controversy can be put at rest, if the Assistant Charity Commissioner were to consider the pending Change Reports expeditiously. If the Assistant

Charity Commissioner were to decide the issue in favour of the appellants, obviously consequential directions will have to be issued by the Assistant Charity Commissioner and the parties will be bound by those directions. I am informed that this Court has already directed the Assistant Charity Commissioner to expeditiously dispose of the pending proceeding in terms of order dated 25th January, 2007 in Writ Petition No.654 of 2007. Counsel for the parties fairly accept that they will extend full cooperation to the Assistant Charity Commissioner for early disposal of the said proceeding.

6. Counsel appearing for respondent Nos. 1 to 7 however, apprehends that the appellants may take recourse to technical objections and protract the proceeding pending before the Assistant Charity Commissioner for the reasons best known to them. Suffice it to observe that the Assistant Charity Commissioner will be free to decide such objections, if raised, on its own merits and proceed with the hearing of the Change Report in the precedence already specified by him, which was subject matter of challenge in Writ Petition No.654 of 2007, unless the Apex Court were to order to the contrary in the proposed appeal, to be filed by the appellants.

7. Accordingly, appeal as well as civil application disposed of on the above terms.